

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Nov 23, 2021**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CHARLES S.,

Plaintiff,

v.

KILOLO KIJAKAZI, ACTING  
COMMISSIONER OF SOCIAL  
SECURITY,<sup>1</sup>

Defendant.

No: 2:20-CV-00413-LRS

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 20, 21. This matter was submitted for consideration without oral argument. Plaintiff is represented by attorney Chad L. Hatfield. Defendant is represented by Special Assistant United States Attorney Joseph J. Langkamer. The

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<sup>1</sup>Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

1 Court, having reviewed the administrative record and the parties' briefing, is fully  
2 informed. For the reasons discussed below, the Court **GRANTS, in part,**  
3 Plaintiff's Motion for Summary Judgment, ECF No. 20, **DENIES** Defendant's  
4 Motion for Summary Judgment, ECF No. 21, and **REMANDS** the case for to the  
5 Commissioner for additional proceedings.

### 6 JURISDICTION

7 Plaintiff Charles S.<sup>2</sup> filed an application for Supplemental Security Income  
8 (SSI) on March 23, 2018, Tr. 96, alleging disability since January 1, 2018, due to  
9 lymphoma, back pain, right hip pain, insomnia, high cholesterol, stutter, arthritis,  
10 joint pain, and right knee pain, Tr. 206, 239. Benefits were denied initially, Tr.  
11 114-22, and upon reconsideration, Tr. 126-32. A hearing before Administrative  
12 Law Judge Jesse Shumway ("ALJ") was conducted on December 18, 2019. Tr.  
13 35-83. Plaintiff was represented by counsel and testified at the hearing. *Id.* The  
14 ALJ also took the testimony of medical expert Alvin Stein, M.D. and vocational  
15 expert Daniel McKinney. *Id.* The ALJ denied benefits on January 22, 2020. Tr.  
16 15-30. The Appeals Council denied Plaintiff's request for review on September  
17 14, 2020. Tr. 1-6. The matter is now before this Court pursuant to 42 U.S.C. §§

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19 <sup>2</sup>In the interest of protecting Plaintiff's privacy, the Court will use Plaintiff's  
20 first name and last initial, and, subsequently, Plaintiff's first name only, throughout  
21 this decision.

405(g); 1383(c)(3). ECF No. 1.

## BACKGROUND

The facts of the case are set forth in the administrative hearing and transcripts, the ALJ's decision, and the briefs of Plaintiff and the Commissioner. Only the most pertinent facts are summarized here.

Plaintiff was 50 years old at the alleged date of onset. Tr. 205-06. He completed the twelfth grade in 1985. Tr. 240. Plaintiff reported a work history as a concrete laborer. Tr. 240. At application, he stated that he stopped working on January 1, 2015, due to his conditions. Tr. 239-40.

## STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. §§ 405(g), 1383(c). The scope of review under § 405(g) is limited; the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether the standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

1 In reviewing a denial of benefits, a district court may not substitute its  
2 judgment for that of the Commissioner. “The court will uphold the ALJ’s  
3 conclusion when the evidence is susceptible to more than one rational  
4 interpretation.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008).  
5 Further, a district court will not reverse an ALJ’s decision on account of an error  
6 that is harmless. *Id.* An error is harmless where it is “inconsequential to the  
7 [ALJ’s] ultimate nondisability determination.” *Id.* (quotation and citation omitted).  
8 The party appealing the ALJ’s decision generally bears the burden of establishing  
9 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

#### 10 **FIVE-STEP EVALUATION PROCESS**

11 A claimant must satisfy two conditions to be considered “disabled” within  
12 the meaning of the Social Security Act. First, the claimant must be “unable to  
13 engage in any substantial gainful activity by reason of any medically determinable  
14 physical or mental impairment which can be expected to result in death or which  
15 has lasted or can be expected to last for a continuous period of not less than twelve  
16 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be  
17 “of such severity that he is not only unable to do his previous work[,] but cannot,  
18 considering his age, education, and work experience, engage in any other kind of  
19 substantial gainful work which exists in the national economy.” 42 U.S.C. §  
20 1382c(a)(3)(B).

21 The Commissioner has established a five-step sequential analysis to

1 determine whether a claimant satisfies the above criteria. See 20 C.F.R. §  
2 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant's work  
3 activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in "substantial  
4 gainful activity," the Commissioner must find that the claimant is not disabled. 20  
5 C.F.R. § 416.920(b).

6 If the claimant is not engaged in substantial gainful activity, the analysis  
7 proceeds to step two. At this step, the Commissioner considers the severity of the  
8 claimant's impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from  
9 "any impairment or combination of impairments which significantly limits [his]  
10 physical or mental ability to do basic work activities," the analysis proceeds to step  
11 three. 20 C.F.R. § 416.920(c). If the claimant's impairment does not satisfy this  
12 severity threshold, however, the Commissioner must find that the claimant is not  
13 disabled. 20 C.F.R. § 416.920(c).

14 At step three, the Commissioner compares the claimant's impairment to  
15 severe impairments recognized by the Commissioner to be so severe as to preclude  
16 a person from engaging in substantial gainful activity. 20 C.F.R. §  
17 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the  
18 enumerated impairments, the Commissioner must find the claimant disabled and  
19 award benefits. 20 C.F.R. § 416.920(d).

20 If the severity of the claimant's impairment does not meet or exceed the  
21 severity of the enumerated impairments, the Commissioner must pause to assess

1 the claimant's "residual functional capacity." Residual functional capacity  
2 ("RFC"), defined generally as the claimant's ability to perform physical and  
3 mental work activities on a sustained basis despite his or her limitations, 20 C.F.R.  
4 § 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

5 At step four, the Commissioner considers whether, in view of the claimant's  
6 RFC, the claimant is capable of performing work that he or she has performed in  
7 the past (past relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is  
8 capable of performing past relevant work, the Commissioner must find that the  
9 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of  
10 performing such work, the analysis proceeds to step five.

11 At step five, the Commissioner considers whether, in view of the claimant's  
12 RFC, the claimant is capable of performing other work in the national economy.  
13 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner  
14 must also consider vocational factors such as the claimant's age, education, and  
15 past work experience. 20 C.F.R. § 416.920(a)(4)(v). If the claimant is capable of  
16 adjusting to other work, the Commissioner must find that the claimant is not  
17 disabled. 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to  
18 other work, analysis concludes with a finding that the claimant is disabled and is  
19 therefore entitled to benefits. 20 C.F.R. § 416.920(g)(1).

20 The claimant bears the burden of proof at steps one through four. *Tackett v.*  
21 *Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five,

1 the burden shifts to the Commissioner to establish that (1) the claimant is capable  
2 of performing other work; and (2) such work “exists in significant numbers in the  
3 national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386,  
4 389 (9th Cir. 2012).

### 5 THE ALJ’S FINDINGS

6 At step one, the ALJ found that Plaintiff has not engaged in substantial  
7 gainful activity since March 23, 2018, the date of application. Tr. 17. At step two,  
8 the ALJ found that Plaintiff has the following severe impairments:  
9 methamphetamine abuse; obesity; and diabetes with peripheral neuropathy. Tr. 18.

10 At step three, the ALJ found that Plaintiff does not have an impairment or  
11 combination of impairments that meets or medically equals the severity of a listed  
12 impairment. Tr. 20. The ALJ then found that Plaintiff has the RFC to perform  
13 light work as defined in 20 CFR § 416.967(b) with the following limitations:

14 he can never crawl or climb ladders, ropes, or scaffolds, and can only  
15 occasionally perform all other postural activities; he can occasionally  
16 push and pull with the bilateral upper and lower extremities; he is  
17 limited to frequently handling fingering, and feeling; he can have no  
18 exposure to pulmonary irritants, occasional exposure to temperature  
extremes of cold and hot, and frequent exposure to humidity and  
wetness; he is limited to simple, routine tasks consistent with a  
reasoning level of two or less; and he is limited to occasional contact  
with the public.

19 Tr. 22. At step four, the ALJ found that Plaintiff had no past relevant work. Tr.

20 28. At step five, the ALJ found that considering Plaintiff’s age, education, work  
21 experience, and RFC, there were other jobs that exist in significant numbers in the

1 national economy that Plaintiff can perform, including: garment sorter; warehouse  
2 checker; and weight recorder. Tr. 29. On that basis, the ALJ concluded that  
3 Plaintiff was not under a disability, as defined in the Social Security Act, from  
4 March 23, 2018, the date of application, through the date of his decision. Tr. 30.

## 5 ISSUES

6 Plaintiff seeks judicial review of the Commissioner's final decision denying  
7 him SSI benefits under Title XVI of the Social Security Act. ECF No. 20.

8 Plaintiff raises the following issues for this Court's review:

- 9 1. Whether the ALJ made a proper step two determination;
- 10 2. Whether the ALJ properly assessed the persuasiveness of the medical source  
11 opinions;
- 12 3. Whether the ALJ properly addressed Plaintiff's symptom statements; and
- 13 4. Whether the ALJ made a proper step five determination.

## 14 DISCUSSION

### 15 1. Step Two

16 Plaintiff challenges the ALJ's step two determination by asserting that the  
17 ALJ failed to account for his bilateral carpal tunnel syndrome, right hip degenerative  
18 joint disease, depressive disorder, and generalized anxiety disorder. ECF No. 20 at  
19 18-19.

20 To show a severe impairment, the claimant must first establish the existence  
21 of a medically determinable impairment by providing medical evidence consisting of



1 signs, symptoms, and laboratory findings; the claimant's own statement of  
2 symptoms, a diagnosis, or a medical opinion is not sufficient to establish the  
3 existence of an impairment. 20 C.F.R. § 416.921. "[O]nce a claimant has shown  
4 that he suffers from a medically determinable impairment, he next has the burden of  
5 proving that these impairments and their symptoms affect his ability to perform  
6 basic work activities." *Edlund v. Massanari*, 253 F.3d 1152, 1159-60 (9th Cir.  
7 2001). At step two, the burden of proof is squarely on the Plaintiff to establish the  
8 existence of any medically determinable impairment(s) and that such impairment(s)  
9 are severe. *Tackett*, 180 F.3d at 1098-99 (In steps one through four, the burden of  
10 proof rests upon the claimant to establish a prima facie case of entitlement to  
11 disability benefits.).

12 At step two, the ALJ found that Plaintiff had the following severe  
13 impairments: methamphetamine abuse; obesity; and diabetes with peripheral  
14 neuropathy. Tr. 18. The ALJ discussed the alleged impairments of bilateral carpal  
15 tunnel syndrome, right hip osteoarthritis, and mental health impairments, but found  
16 they were either not medically determinable or not severe. Tr. 18-19.

#### 17 **A. Bilateral Carpal Tunnel Syndrome**

18 Plaintiff alleges that his bilateral carpal tunnel syndrome is a severe  
19 impairment at step two. ECF No. 20 at 18. The ALJ addressed Plaintiff's alleged  
20 bilateral carpal tunnel syndrome and found that there were no medical signs or  
21 laboratory findings to support the existence of carpal tunnel syndrome. Tr. 18-19.

1 Therefore, he found it was not a medically determinable impairment. *Id.*

2       However, the record shows that Plaintiff had multiple positive Tinel’s sign,  
3 Tr. 907, 911, 923, and Phelan’s sign, Tr. 923, when examined by Dr. Woodruff.

4 Based on these tests, Dr. Woodruff diagnosed Plaintiff with bilateral carpal tunnel  
5 syndrome. Tr. 908, 913, 924. Both the Tinel’s sign and Phelan’s sign are

6 diagnostic tests for carpal tunnel syndrome. 1 DAVID A. MORTON, III, M.D.,  
7 SOCIAL SECURITY DISABILITY MEDICAL TESTS §§ 1.20, 1.26 (1<sup>st</sup> ed. 2015).

8 Therefore, the ALJ’s determination that there were no medical signs or laboratory  
9 findings to support the existence of carpal tunnel syndrome is not supported by  
10 substantial evidence and cannot be upheld.

11       In his decision, the ALJ commented that Dr. Woodruff was “only a resident  
12 physician.” Tr. 18. The Court acknowledges that an impairment must be  
13 established by objective medical evidence from an acceptable medical source. 20  
14 C.F.R. § 416.921. However, any implication that the diagnostic tests failed to meet  
15 the requirements of 20 C.F.R. § 416.21 because Dr. Woodruff was not an  
16 acceptable medical source is unavailing. Multiple doctors oversaw Dr. Woodruff’s  
17 diagnostic testing and treatment during each evaluation and agreed with the overall  
18 assessment and treatment plan set forth by Dr. Woodruff. Tr. 905, 910, 922.

19       Defendant argues that any error resulting from the ALJ’s step two  
20 determination would be harmless. ECF No. 21 at 18-19. However, the ALJ  
21 rejected the opinion of Dr. Woodruff because he relied on non-medically

1 determinable impairments, including carpal tunnel syndrome. Tr. 27. Therefore,  
2 the case is remanded for the ALJ to readdress Plaintiff's carpal tunnel syndrome at  
3 step two accepting the positive Tinel's signs and positive Phelan's signs as  
4 objective medical evidence.

5 **B. Right Hip Osteoarthritis**

6 Plaintiff alleges that his right hip osteoarthritis is a severe impairment at step  
7 two. ECF No. 20 at 18. The ALJ addressed Plaintiff's alleged "mild right hip  
8 osteoarthritis," along with lymphoma, hypertension, tachycardia, sepsis, and  
9 cellulitis and made the following finding:

10 these conditions, whether considered singly or in combination, have  
11 caused only transient and mild symptoms and limitations, are well  
12 controlled with treatment, did not persist for twelve continuous months,  
13 do not have greater than a minimal limitation on the claimant's physical  
or mental ability to perform basic work activities, or are otherwise not  
adequately supported by the medical evidence of record. Accordingly,  
these impairments do not constitute severe impairments.

14 Tr. 18. Since the ALJ addressed all the impairments together and rejected them all  
15 for the above reasons, the ALJ's rationale is not specific enough to allow for  
16 judicial review. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015)  
17 ("we still demand that the agency set forth the reasoning behind its decisions in a  
18 way that allows for meaningful review"). It is unclear why the ALJ found  
19 Plaintiff's osteoarthritis was not severe. Therefore, on remand, the ALJ will  
20 readdress Plaintiff's osteoarthritis at step two.

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1           **C.     Depressive Disorder and Generalized Anxiety Disorder**

2           Plaintiff alleges that his depression and anxiety were severe impairments at  
3 step two. ECF No. 20 at 18. The ALJ found that Plaintiff's mental health  
4 impairments, except for methamphetamine abuse, were not medically determinable  
5 impairments. Tr. 20. ("As these diagnoses were made without information  
6 regarding the claimant's actual substance use and with little objective findings to  
7 support these diagnoses beyond the claimant's own subjective complaints, these  
8 are nonmedically determinable mental health impairments.").

9           In 2015, Dr. Arnold diagnosed Plaintiff with depression and anxiety  
10 following psychological testing including a Rey 15-Item Memory Test, Trails Test,  
11 Beck Depression Index (BDI-1), and Beck Anxiety Index (BAI). Tr. 362. Plaintiff  
12 reported he had never used illegal drugs. Tr. 361. His mental status exam showed  
13 an anxious/depressed mood, moderately constricted affect, some delusional  
14 thought content, and failed serial 7's and serial 3's. Tr. 364-65.

15           In 2018, Dr. Arnold reevaluated Plaintiff and again diagnosed him with  
16 depression and anxiety. Tr. 357. The mental status exam showed moderately to  
17 severely depressed and moderately anxious mood, moderately constricted affect,  
18 abnormal short-term memory, and a failed attempt at the serial 7's and serial 3's.  
19 Tr. 359-60. In this evaluation, Plaintiff again denied drinking or using any illicit  
20 drugs since his last evaluation. Tr. 356.

21           Despite the repeated statements that he did not use illicit drugs, Plaintiff was

1 treated for acute methamphetamine toxicity in January of 2018. Tr. 307, 310.  
2 Therefore, the ALJ was accurate that Dr. Arnold was not aware of Plaintiff's illicit  
3 drug use. Tr. 20 ("Dr. Arnold's opinions were formed based on the claimant's  
4 false reports of no drug use, which deprived Dr. Arnold of the opportunity to  
5 assess the effect of the claimant's drug use before offering opinions on the  
6 claimant's diagnoses or functional limitations."). However, the ALJ's conclusion  
7 that the diagnoses of depression and anxiety were made "with little objecting  
8 findings," Tr. 20, is not supported in the record considering the testing performed  
9 and the observations made during Dr. Arnold's evaluations.

10 In August of 2019, Dr. Woodruff completed a depression screening that  
11 showed a PHQ-9 score of 19, which correlates with moderately severe depression,  
12 and a GAD-7 score of 17, which correlates with severe generalized anxiety. Tr.  
13 911. Dr. Woodruff diagnosed Plaintiff with major depressive disorder, stating that  
14 it was new, but he also noted past PHQ-9 scores as high as 16 eighteen months  
15 ago. Tr. 912. Depression screening the next month showed a PHQ-9 score of 20,  
16 consistent with severe depression, and a GAD-7 score of 17, consistent with severe  
17 generalized anxiety disorder. Tr. 923. Additionally, Dr. Woodruff observed an  
18 anxious mood. *Id.* Plaintiff admitted to concurrent drug use including  
19 methamphetamine. Tr. 924. The ALJ found that the diagnosis of mental health  
20 impairments were not reliable because he was a primary care physician, not a  
21 mental health specialist, and he failed to differentiate between the claimant's

1 known drug use and mental health symptoms. Tr. 20. Furthermore, the ALJ  
2 concluded that Dr. Woodruff's treatment notes indicate that Plaintiff's mental  
3 health impairments were the result of his sexual dysfunction and not a severe  
4 mental health impairment. Tr. 20 ("There is nothing in Dr. Woodruff's  
5 examination notes that indicates severe mental health issues outside of his  
6 reasonable distress regarding sexual functioning, which is related to his diabetes  
7 mellitus condition."). The ALJ's assertion that a primary care physician does not  
8 have the training to diagnose depression and anxiety in light of substance abuse or  
9 the ability to differentiate mental health symptoms from the impact of sexual  
10 dysfunction is the ALJ stepping into the role of doctor and not that of adjudicator.  
11 An ALJ may not insert his interpretation of the results in place of an examining  
12 physician's opinion. *See Schmidt v. Sullivan*, 914 F.2d 117, 118 (7th Cir. 1990)  
13 ("[J]udges, including administrative law judges of the Social Security  
14 Administration, must be careful not to succumb to the temptation to play doctor.  
15 The medical expertise of the Social Security Administration is reflected in  
16 regulations; it is not the birthright of the lawyers who apply them. Common sense  
17 can mislead; lay intuitions about medical phenomena are often wrong.") (citations  
18 omitted). On remand, the ALJ will readdress Plaintiff's alleged mental health  
19 impairments at step two in light of the objective testing and observations of  
20 Plaintiff's providers.

21 ///

1     **2.     Medical Source Opinions**

2             Plaintiff challenges the ALJ's determination regarding the persuasiveness of  
3     the opinions from Michael Woodruff, M.D., John Arnold, Ph.D., Janis Lewis,  
4     Ph.D., and Alvin Stein, M.D. ECF No. 20 at 8-18.

5             For claims filed on or after March 27, 2017, new regulations apply that  
6     change the framework for how an ALJ must weigh medical opinion evidence.  
7     *Revisions to Rules Regarding the Evaluation of Medical Evidence*, 2017 WL  
8     168819, 82 Fed. Reg. 5844 (Jan. 18, 2017); 20 C.F.R. § 416.920c. The new  
9     regulations provide that the ALJ will no longer give any specific evidentiary  
10    weight to medical opinions or prior administrative medical findings, including  
11    those from treating medical sources. 20 C.F.R. § 416.920c(a). Instead, the ALJ  
12    will consider the persuasiveness of each medical opinion and prior administrative  
13    medical finding, regardless of whether the medical source is an Acceptable  
14    Medical Source. 20 C.F.R. § 416.920c(c). The ALJ is required to consider  
15    multiple factors, including supportability, consistency, the source's relationship  
16    with the claimant, any specialization of the source, and other factors (such as the  
17    source's familiarity with other evidence in the file or an understanding of Social  
18    Security's disability program). *Id.* The regulations emphasize that the  
19    supportability and consistency of the opinion are the most important factors, and  
20    the ALJ must articulate how he considered those factors in determining the  
21    persuasiveness of each medical opinion or prior administrative medical finding. 20

1 C.F.R. § 416.920c(b). The ALJ may explain how he considered the other factors,  
2 but is not required to do so, except in cases where two or more opinions are equally  
3 well-supported and consistent with the record. *Id.*

4 Supportability and consistency are further explained in the regulations:

5 (1) *Supportability*. The more relevant the objective medical evidence  
6 and supporting explanations presented by a medical source are to  
7 support his or her medical opinion(s) or prior administrative medical  
8 finding(s), the more persuasive the medical opinions or prior  
9 administrative medical finding(s) will be.

8 (2) *Consistency*. The more consistent a medical opinion(s) or prior  
9 administrative medical finding(s) is with the evidence from other  
10 medical sources and nonmedical sources in the claim, the more  
11 persuasive the medical opinion(s) or prior administrative medical  
12 finding(s) will be.

11 20 C.F.R. § 404.1520c(c).<sup>3</sup>

12 **A. Michael Woodruff, M.D.**

13 On September 30, 2019, Dr. Woodruff completed a Medical Report form.  
14 Tr. 902-04. He diagnosed Plaintiff with hypertension, sinus tachycardia, obesity,  
15 diabetes type II, carpal tunnel syndrome, major depressive disorder, history of  
16

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17 <sup>3</sup>The parties disagree over whether Ninth Circuit case law continues to be  
18 controlling in light of the amended regulations, specifically whether an ALJ is still  
19 required to provide specific and legitimate reasons for discounting a contradicted  
20 opinion from a treating or examining physician. ECF No. 22 at 1-2. The Court  
21 finds resolution of this question unnecessary to the disposition of this case.



1 diffuse large cell lymphoma. Tr. 902. He opined that if Plaintiff attempted to  
2 work a 40-hour week scheduled, it was more probably than not that he would miss  
3 work four or more days per month. Tr. 903. He limited Plaintiff to sedentary work  
4 with occasional handling and frequent reaching with the upper extremities. Tr.  
5 903-04. He further opined that Plaintiff would be off task 12% to 20% of the time  
6 if working a 40-hour work week. Tr. 904. He completed the form with the  
7 following statement: “I would continue to encourage [Plaintiff] to pursue other  
8 form[s] of work – unable to do concrete work now. His anxiety limits him. [H]e is  
9 however declining counseling at this time. – Update, he is starting to call Frontier  
10 Behavioral Health. If anything[,] would ONLY support temporary disability, not  
11 permanent.” Tr. 904.

12 The ALJ found the opinion to be not persuasive. Tr. 26-27. In addressing  
13 supportability, the ALJ found that the opinion was “not consistent with or  
14 supported by the longitudinal evidence of record, including the evidence received  
15 at the hearing level and Dr. Woodruff’s own limited treatment notes.” Tr. 26. The  
16 ALJ went on to state that “Dr. Woodruff’s opinions are offered with little  
17 explanation, and what explanation is provided shows that Dr. Woodruff is relying  
18 on nonmedically determinable impairments, such as [carpal tunnel syndrome], in  
19 making his assessment. Tr. 26-27. As discussed above, the ALJ’s determination  
20 that carpal tunnel syndrome was not a medically determinable impairment was not  
21 supported by substantial evidence. Therefore, the ALJ’s discussion of

1 supportability is also not supported by substantial evidence. The ALJ will  
2 readdress Dr. Woodruff's opinion on remand.

3 **B. John Arnold, Ph.D.**

4 On November 30, 2015, Dr. Arnold evaluated Plaintiff and later completed a  
5 Psychological/Psychiatric Evaluation of Plaintiff for the Washington State  
6 Department of Social and Health Services (DSHS). Tr. 361-65. The ALJ  
7 diagnosed Plaintiff with major depressive disorder, generalized anxiety disorder,  
8 rule out somatic symptom disorder, and rule out antisocial personality disorder and  
9 schizotypal personality disorder features. Tr. 362. He opined that Plaintiff had a  
10 marked limitation in five areas of basic work function and a moderate limitation in  
11 seven areas of basic work function. Tr. 363. He opined that these limitations  
12 would last fifteen months with available treatment. Tr. 364.

13 On April 23, 2018, Dr. Arnold completed a second  
14 Psychological/Psychiatric Evaluation of Plaintiff for DSHS. Tr. 356-60. He  
15 diagnosed Plaintiff with persistent depressive disorder, generalized anxiety  
16 disorder, and a rule out of antisocial personality disorder features. Tr. 358. He  
17 opined that Plaintiff had a severe limitation in the ability to adapt to changes in a  
18 routine work setting, a marked limitation in six basic work functions and a  
19 moderate limitation in the remaining six basic work functions. Tr. 358. He opined  
20 that these limitations would last twelve months with available treatment. Tr. 359.

21 The ALJ found both opinions to be unpersuasive. Tr. 27-28. When

1 discussing supportability, the ALJ found that both opinions were “premised  
2 entirely on nonmedically determinable impairments and are therefore  
3 unpersuasive.” Tr. 27, 28. As discussed above, the ALJ erred in his determination  
4 that Plaintiff’s mental health impairments were not medically determinable  
5 impairments. Therefore, the ALJ’s discussion of supportability and finding that  
6 the opinions were unpersuasive cannot be upheld. Therefore, on remand, the ALJ  
7 will readdress the opinions of Dr. Arnold.

8 **C. Janis Lewis, Ph.D.**

9 In April of 2018, Dr. Lewis reviewed Dr. Arnold’s medical reports and  
10 provided an opinion that matched that of Dr. Arnold’s 2018 opinion. Tr. 366-69.  
11 The ALJ found the opinion was not persuasive because it was based on Dr.  
12 Arnold’s opinion. Tr. 28. As addressed above, the ALJ must readdress the  
13 persuasiveness of Dr. Arnold’s opinions. Therefore, the ALJ will readdress the  
14 persuasiveness of Dr. Lewis’ opinion on remand.

15 **D. Alvin Stein, M.D.**

16 Dr. Stein testified at Plaintiff’s hearing on December 18, 2019. Tr. 41-60.  
17 Dr. Stein opined that Plaintiff was limited to light work with a limitation to sitting  
18 for four hours or more as needed during the day. Tr. 47. He limited Plaintiff’s  
19 pushing and pulling with the upper and lower extremities due to neuropathy. He  
20 stated that he might have difficulty grasping things and holding tight for repetitive  
21 use of his hands while pushing and pulling. *Id.* He limited Plaintiff to occasional

1 climbing ramps or stairs, balancing, stooping, kneeling, or crouching. *Id.* He  
2 precluded Plaintiff from climbing ropes, ladders, or scaffolds, from working in  
3 high, exposed locations, and from crawling. *Id.* He limited Plaintiff to frequent  
4 handling, fingering, feeling. Tr. 48. He further limited Plaintiff to frequent  
5 exposure to wet or humid weather and occasional exposure to extreme cold or heat.  
6 *Id.* He precluded Plaintiff from exposure to fumes, dust, odor, and pollen. *Id.*

7 The ALJ found Dr. Stein’s opinion regarding sitting to be not persuasive, but  
8 found the remainder of the opinion to be persuasive. Tr. 25-26. Considering the  
9 case is being remanded for additional proceedings, the ALJ will readdress the  
10 persuasiveness of Dr. Stein’s opinion on remand.

### 11 **3. Plaintiff’s Symptom Statements**

12 Plaintiff challenges the ALJ’s treatment of his symptom statements. ECF  
13 No. 20 at 19-20.

14 It is generally the province of the ALJ to make determinations regarding the  
15 reliability of Plaintiff’s symptom statements, *Andrews v. Shalala*, 53 F.3d 1035,  
16 1039 (9th Cir. 1995), but the ALJ’s findings must be supported by specific cogent  
17 reasons, *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent  
18 affirmative evidence of malingering, the ALJ’s reasons for rejecting the claimant’s  
19 testimony must be “specific, clear and convincing.” *Smolen v. Chater*, 80 F.3d  
20 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995).

21 The ALJ found Plaintiff’s “statements concerning the intensity, persistence,

1 and limiting effects of these symptoms are not entirely consistent with the medical  
2 evidence and other evidence in the record for the reasons explained in this  
3 decision.” Tr. 23. The evaluation of a claimant’s symptom statements and their  
4 resulting limitations relies, in part, on the assessment of the medical evidence. *See*  
5 20 C.F.R. § 416.929(c); S.S.R. 16-3p. Therefore, in light of the case being  
6 remanded for the ALJ to readdress the medical source opinions in the file, a new  
7 assessment of Plaintiff’s subjective symptom statements will be necessary.

#### 8 **4. Step Five**

9 Plaintiff argues that the ALJ erred at step five by presenting an incomplete  
10 hypothetical to the vocational expert. ECF No. 20 at 20-21.

11 The hypothetical presented to the vocational expert matched the ALJ’s RFC  
12 determination. Tr. 22, 77. A claimant’s RFC is “the most [a claimant] can still do  
13 despite [his] limitations.” 20 C.F.R. § 416.945(a); *see also* 20 C.F.R. Part 404,  
14 Subpart P, Appendix 2, § 200.00(c) (defining RFC as the “maximum degree to  
15 which the individual retains the capacity for sustained performance of the physical-  
16 mental requirements of jobs.”). Since the ALJ has been instructed to readdress  
17 step two, the persuasiveness of the medical opinions, and Plaintiff’s symptoms  
18 statements, a new RFC determination and a new step five determination will be  
19 required upon remand.

#### 20 **CONCLUSION**

21 Plaintiff requests that the Court remand the case for an immediate award of

1 benefits. ECF No. 20 at 21.

2 The decision whether to remand for further proceedings or reverse and  
3 award benefits is within the discretion of the district court. *McAllister v. Sullivan*,  
4 888 F.2d 599, 603 (9th Cir. 1989). An immediate award of benefits is appropriate  
5 where “no useful purpose would be served by further administrative proceedings,  
6 or where the record has been thoroughly developed,” *Varney v. Sec’y of Health &*  
7 *Human Servs.*, 859 F.2d 1396, 1399 (9th Cir. 1988), or when the delay caused by  
8 remand would be “unduly burdensome[.]” *Terry v. Sullivan*, 903 F.2d 1273, 1280  
9 (9th Cir. 1990); *see also Garrison v. Colvin*, 759 F.3d 995, 1021 (noting that a  
10 district court may abuse its discretion not to remand for benefits when all of these  
11 conditions are met). This policy is based on the “need to expedite disability  
12 claims.” *Varney*, 859 F.2d at 1401. But where there are outstanding issues that  
13 must be resolved before a determination can be made, and it is not clear from the  
14 record that the ALJ would be required to find a claimant disabled if all the  
15 evidence were properly evaluated, remand is appropriate. *See Benecke*, 379 F.3d  
16 at 595-96; *Harman v. Apfel*, 211 F.3d 1172, 1179-80 (9th Cir. 2000).

17 The Court finds that further administrative proceedings are appropriate. *See*  
18 *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103-04 (9th Cir. 2014)  
19 (remand for benefits is not appropriate when further administrative proceedings  
20 would serve a useful purpose). The record contains evidence of illicit drug use  
21 during the relevant period. Tr. 307, 310. In cases involving substance use

1 disorders, the ALJ must complete the five-step sequential evaluation in accord with  
2 S.S.R. 13-2p. Therefore, even if the disputed evidence were credited as true,  
3 further findings would be required before a favorable determination could be  
4 made. On remand, the ALJ must make a new step two determination in accord  
5 with this Order, readdress the persuasiveness of the medical opinions in the record,  
6 readdress Plaintiff's symptom statements, and make a new RFC determination and  
7 a new step five determination. In addition, the ALJ will supplement the record  
8 with any outstanding medical evidence and take testimony from a vocational  
9 expert at any remand proceedings.


10 **ACCORDINGLY, IT IS HEREBY ORDERED:**

11 1. Plaintiff's Motion for Summary Judgment, ECF No. 20, is **GRANTED**,  
12 **in part**, and the matter is **REMANDED** to the Commissioner for  
13 additional proceedings consistent with this Order.

14 2. Defendant's Motion for Summary Judgment, ECF No. 21, is **DENIED**.

15 The District Court Clerk is directed to enter this Order and provide copies to  
16 counsel. Judgment shall be entered for Plaintiff and the file shall be **CLOSED**.

17 **DATED** November 23, 2021.

18   
19 \_\_\_\_\_  
20 LONNY R. SUKO  
21 Senior United States District Judge